IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 296 of 2001

with

SPECIAL CIVIL APPLICATION No 310 of 2001

with

SPECIAL CIVIL APPLICATION No 311 of 2001

with

SPECIAL CIVIL APPLICATION No 1680 of 2001

with

SPECIAL CIVIL APPLICATION No 1681 of 2001

with

SPECIAL CIVIL APPLICATION No 1682 of 2001

and

SPECIAL CIVIL APPLICATION No 1689 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DILIPBHAI KESHAVBHAI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

(In All Special Civil Applications)

MR PRAVIN GONDALIYA for Petitioner

MR RC KODEKAR, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/05/2001

COMMON ORAL JUDGEMENT

#. As the petitioners are the co-detenus and they were detained under the order of the Police Commissioner, Surat City, dated 16.11.2000 as `bootlegger' in exercise of powers conferred upon the authority under sub-section 2 of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985, (hereinafter referred to as the `Act') these matters were taken up for hearing together and are decided by this common order.

#. The facts of the case and grounds of challenge of the detention order which are common in all these cases, are taken up from special civil application No.296 of 2001.

#. The learned counsel for the petitioner raised manifold contentions challenging the order of detention of the petitioner but as this petition deserves acceptance only on one ground, I do not consider to digest on all the contentions and give decision thereon. In the original petition though the ground on which this petition is being allowed was not raised but the petitioner prayed for amendment of the petition which came to be allowed on 28.2.2001 and he was permitted to raise this contention.

#. From the record of the special civil application No.296 of 2001, as well as other petitions, I do not find that the respondents have filed reply to any of the special civil applications. The learned counsel who is appearing for the respondents also is in agreement that in none of the petition, reply has been filed by respondents.

#. Against all the petitioners, there is only one criminal case for the offence under the Prohibition Act. Two unregistered cases are also taken into consideration against them. The learned counsel for the petitioners contended that the order of detention of the petitioners is violative of Article 14 of the Constitution of India because one co-detenu, namely, Sudhir @ Bado Chhotubhai Kahar, who was detained on the same material has been released by the Government on or about 14.2.2001. The petitioners were also detained on the same material on which the said detenu was detained and therefore, they deserve to be released by this Court.

#. The learned counsel for the respondents does not dispute that Sudhir @ Bado Chhotubhai Kahar was a co-detenu in this matter and he has been released by the Government. Reply to the special civil application has not been filed and this factual averment made by petitioners stand uncontroverted and it is to be taken to be correct. The court has directed the respondents to file the relevant papers of release of that detenu by the State Government. The Government Advocate submitted translation of the relevant file of release of the detenu by the State Government.

#. The learned counsel for the petitioners, in support of his contention, placed reliance on the following two decisions of this court:

(i) Madanlal Hiralal Savariya v. State of Gujarat & ors. reported in 1999(2) GLR 1074

(ii) Special Civil Application No.8095 of 1998 decided on 5.7.1999 (Coram: Ms.Justice R.M.Doshit) in the case of Babuji J. Thakore v. State of Gujarat

#. The learned counsel for the respondents contended that the State Government has power under Section 15 of the Act aforesaid to withdraw the detention order of any detenu at any time during the period of his detention. It has next been contended that this power of the State Government is not questionable by the other detenu. Carrying this contention further, the learned counsel for the respondents submitted that even if a wrong decision has been taken by the State Government releasing one of the co-detenu, it may not be a ground for raising plea of discrimination of other co-detenus in the court in the proceedings under Article 226 of the Constitution of India.

#. I have given my thoughtful considerations to the rival contentions raised by learned counsel for the parties.

##. It is no more res-integra that detention of a citizen by the State under the Act aforesaid affects his personal liberty. This Act is specially enacted for special purposes to control law and order position in the State and it has good objects and purposes. Section 15 of the Act empowers the State Government to release any detenu prematurely and I find prima-facie sufficient merits in the contention of the learned counsel for the respondents that only in exceptional cases, this order of the State Government may be subject to judicial scrutiny by this court under Article 226 of the Constitution of India. The order passed by the State Government under Section 15 of the Act releasing the co-detenu Sudhir Bado Chhotubhai Kahar is not questioned by petitioners in these petitions nor any other person has challenged that order. In view of this fact, it is not necessary nor this court is called upon to go on and examine the legality, propriety and correctness of the order of the State Government releasing the co-detenu Sudhir @ Bado Chhotubhai Kahar in exercise of its powers u/s.15 of the Act.

##. So far as the State of Gujarat is concerned, by defending these petitions, it cannot question its own order. In case what the State Government considers that the order passed by it u/s.15 of the Act is illegal or incorrect, it is always open to it to review this order but it cannot question the same while defending the proceedings taken under Article 226 of the Constitution by other detenus. In view of this legal position, as well as the fact that the order passed by the State Government under Section 15 of the Act has not been withdrawn by itself, the order of release of the co-detenu Sudhir @ Bado Chhotubhai Kahar by the State Government in exercise of its powers u/s.15 of the Act is taken to be a legal order. If it is a legal order, naturally, a plea of discrimination is available to the petitioners. From the documents which have been filed, i.e. the translation of the notes of the file of release of co-detenu Sudhir @ Bado Chhotubhai Kahar by the State Government u/s.15 of the Act, I find that he has been released on the ground that there is only one offence against the detenu. The decision to release him subject to the following conditions has been taken on 20.1.2001, the translation of which reads as under:

Taking into consideration the fact that there is only one offence against the detenu, he may be released, subject to following conditions:

1. A personal bond of Rs.25,000/=
2. Two sureties of Rs.10,000/= each
3. An undertaking that he will not indulge in such activities and if it is violated, the amount of bonds would be recovered

sd/- MOS (Home)
sd/- C.M.
20.1

Thereafter a note has been put and the attention has been drawn that under section 15 of the Act, the State cannot pass a conditional release order of the detenu. The matter was reconsidered and a somersault appears to have been taken and this time, the detenu was ordered to be released unconditionally on the ground of his sickness, the report of the jail authority in this respect and representation of the wife of the detenu. If we go by the report of the jail authority as well as representation of the wife of the detenu and the medical reports, I find that the detenu Sudhir @ Bado Chhotubhai Kahar was reported to be diabetic, that is to say, that may be hardly a ground for release of a detenu by the State Government in exercise of powers conferred upon it u/s.15 of the Act. If on such ground his release is made, then it may be easy for the State Government itself to render this Act itself nugatory. From the documents which are on record, it appears to be a case of some political favour extended to the detenu by the State Government. Be that as it may, this court cannot be oblivious of the fact that said Sudhir @ Bado Chhotubhai Kahar is also a co-detenu and has been detained on the same grounds on which these petitioners were detained and certainly this court will not permit the respondents to make any discrimination. If we go by the facts of this case, the consideration which prevailed with the State Government for release of that co-detenu was that there is only one case against him of prohibition. That is the ground also equally applicable to the present petitioners. It is a different matter that to regale out of the legal position as laid down by this Court, the State Government has taken a somersault but that does not mean that what prevailed with the State Government at first flash in the matter has gone. These matters are covered by two decisions of this court on which reliance has been placed by learned counsel for the petitioners.

##. As a result of aforesaid discussion, all these special civil applications succeed and the same are allowed and the orders of detention of the petitioners dated 16.11.2000 are quashed and set aside. The detenus, (i) Dilipbhai Keshavbhai Patel, (ii) Chando @ Chandrakant Dahyabhai Patel, (iii) Kantibhai Madhubhai Rathod, (iv) Subhashbhai Chhanabhai Rathod, (v) Ramesh Dahyabhai Rathod, (vi) Pravin @ Pavlo Bhimsing Rathod and (vii) Vijay Chaturbhai Vasava, be set at liberty forthwith, if they are not required in any other case. Rule is made absolute in all cases accordingly. The State of Gujarat is directed to pay Rs.3,000/= as cost to the detenu in each case.

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(sunil)